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HB 166 RELATING TO DECLARATORY ORDERS

Statement for
Senate Committee on
Agriculture
Public Hearing - March 16, 1989

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HB 166 would amend HRS Chapter 343 by adding a new section to clarify that the Environmental Council can issue a declaratory order as to whether and when an environmental assessment and notice of determination are or are not required under Section 343-5.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

We note that the proposed amendment applies only to appeals to the council on the applicability of an action to Chapter 343. It does not provide an appeal procedure for determinations.

We support the intent of this amendment. We have some reservations as to its necessity, however we greatly appreciate the opportunity to once again provide the rationale for our support.

This particular piece of legislation shouldn't be necessary given the language of HRS 343-6 and Chapter 91. Unfortunately, recent rulings from the Attorney General's office have indicated that very specific statutory directives are needed if the Council is to fulfill its otherwise legislatively mandated responsibilities pursuant to HRS 343. Therefore we must concur with the need for this legislation.

Under the present language of HRS 343-6, the Environmental Council is directed to "adopt, amend or repeal necessary rules for the purposes of this Chapter [HRS 343] in accordance with Chapter 91 including, but not limited to, rules which shall..." guide certain actions, procedures, or requirements under HRS 343. Chapter 91-8 states that, "Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission consideration, and prompt disposition."

Because the Environmental Council is the "Agency" directed by statute [343-6] to adopt, amend, or repeal necessary rules for the purposes of this Chapter in accordance with Chapter 91 including, but not limited to, rules to govern certain specific directives, any administrative appeal procedure as to the applicability of these statutory provisions or of any rule or order of the council must, under Chapter 91, be directed to the Council. There is no alternative. However, over the past 2 years, the attorney generals office has issued opinions that limited the ability of the council to issue declaratory rulings to only those specifically listed rulemaking directives, despite the language that the Council's rulemaking authority is "not limited to" the nine listed directives.

It should be noted that the Council formerly issued Declaratory rulings, when requested, and that the rules and procedures for the issuance of such rulings are clearly stated in the Administrative Rules of the Council, Title 11, Chapter 201, Section 21. These rules were adopted and approved as to form by the Attorney General's Office and Governor George Ariyoshi on November 25, 1985.

Therefore, while the Council should be able to issue declaratory rulings without this amendment, apparently it is required if the Attorney General's opinion is to be addressed.

One final amendment is suggested. HRS 343-6(a) (9) directs the Council to prescribe the contents of an environmental assessment. This directive is already included in paragraph (3). Therefore we recommend that HRS 343-6(a)(9) be deleted.

With the amendments suggested, we concur with the intent of HB 166.